

H. R. 11656

1 ticable information regarding the decisionmaking processes
 2 of the Federal Government. It is the purpose of this Act
 3 to provide the public with such information while protecting
 4 the rights of individuals and the ability of the Government
 5 to carry out its responsibilities.

6 OPEN MEETINGS

7 SEC. 3. (a) Title 5, United States Code, is amended
 8 by adding after section 552a the following new section:

9 "§ 552b. Open meetings

10 "(a) For purposes of this section—

11 "(1) the term 'agency' means the Federal Election
 12 Commission and any agency, as defined in section 552

13 (e) of this title, headed by a collegial body composed of
 14 two or more individual members, a majority of whom
 15 are appointed to such position by the President with
 16 the advice and consent of the Senate, and includes any
 17 subdivision thereof authorized to act on behalf of the
 18 agency;

19 "(2) the term 'meeting' means the deliberations of
 20 at least the number of individual agency members re-
 21 quired to take action on behalf of the agency where such
 22 deliberations concern the joint conduct or disposition of
 23 agency business; and

24 "(3) the term 'member' means an individual who
 25 belongs to a collegial body heading an agency.

1 “(b) Except as provided in subsection (c), every por-
2 tion of every meeting of an agency shall be open to public
3 observation.

4 “(c) Except in a case where the agency finds that the
5 public interest requires otherwise, subsection (b) shall
6 not apply to any portion of an agency meeting and the
7 requirements of subsections (d) and (e) shall not apply to
8 any information pertaining to such meeting otherwise re-
9 quired by this section to be disclosed to the public; where the
10 agency properly determines that such portion or portions of
11 its meeting or the disclosure of such information is likely to—

12 “(1) disclose matters (A) specifically authorized
13 under criteria established by an Executive order to be
14 kept secret in the interests of national defense or foreign
15 policy and (B) in fact properly classified pursuant to
16 such Executive order;

17 “(2) relate solely to the internal personnel rules
18 and practices of an agency;

19 “(3) disclose information required to be withheld
20 from the public by any statute establishing particular
21 criteria or referring to particular types of information;

22 “(4) disclose trade secrets and commercial or finan-
23 cial information obtained from a person and privileged or
24 confidential;

1 “(5) involve accusing any person of a crime, or
2 formally censuring any person;

3 “(6) disclose information of a personal nature
4 where disclosure would constitute a clearly unwarranted
5 invasion of personal privacy;

6 “(7) disclose investigatory records compiled for
7 law enforcement purposes, but only to the extent that
8 the production of such records would (A) interfere with
9 enforcement proceedings, (B) deprive a person of a
10 right to a fair trial or an impartial adjudication, (C)
11 constitute an unwarranted invasion of personal privacy,
12 (D) disclose the identity of a confidential source and,
13 in the case of a record compiled by a criminal law en-
14 forcement authority in the course of a criminal investi-
15 gation, or by an agency conducting a lawful national
16 security intelligence investigation, confidential informa-
17 tion furnished only by the confidential source, (E) dis-
18 close investigative techniques and procedures, or (F)
19 endanger the life or physical safety of law enforcement
20 personnel;

21 “(8) disclose information contained in or related to
22 examination, operating, or condition reports prepared
23 by, on behalf of, or for the use of an agency responsible
24 for the regulation or supervision of financial institutions;

1 “(9) disclose information the premature disclosure
2 of which would—

3 “(A) in the case of an agency which regulates
4 currencies, securities, commodities, or financial in-
5 stitutions, be likely to (i) lead to significant financial
6 speculation, or (ii) significantly endanger the sta-
7 bility of any financial institution; or

8 “(B) in the case of any agency, be likely to
9 significantly frustrate implementation of a proposed
10 agency action, except that this subparagraph shall
11 not apply in any instance where the content or na-
12 ture of the proposed agency action already has been
13 disclosed to the public by the agency, or where the
14 agency is required by law to make such disclosure
15 prior to taking final agency action on such proposal;
16 or

17 “(10) specifically concern the agency’s issuance
18 of a subpoena, or the agency’s participation in a civil
19 action, an action in a foreign court or international tri-
20 bunal, or an arbitration, or the initiation, conduct, or
21 disposition by the agency of a particular case of formal
22 agency adjudication pursuant to the procedures in section
23 554 of this title or otherwise involving a determination
24 on the record after opportunity for a hearing.

1 “(d) (1) Action under subsection (c) to close a por-
2 tion or portions of an agency meeting shall be taken only
3 when a majority of the entire membership of the agency
4 votes to take such action. A separate vote of the agency
5 members shall be taken with respect to each agency meeting
6 a portion or portions of which are proposed to be closed to
7 the public pursuant to subsection (c), or with respect to any
8 information which is proposed to be withheld under sub-
9 section (c). A single vote may be taken with respect to a
10 series of portions of meetings which are proposed to be
11 closed to the public, or with respect to any information con-
12 cerning such series, so long as each portion of a meeting
13 in such series involves the same particular matters, and is
14 scheduled to be held no more than thirty days after the
15 initial portion of a meeting in such series. The vote of each
16 agency member participating in such vote shall be recorded
17 and no proxies shall be allowed.

18 “(2) Whenever any person whose interests may be
19 directly affected by a portion of a meeting requests that the
20 agency close such portion to the public for any of the rea-
21 sons referred to in paragraph (5), (6), or (7) of subsec-
22 tion (c), the agency, upon request of any one of its members,
23 shall vote by recorded vote whether to close such meeting.

24 “(3) Within one day of any vote taken pursuant to
25 paragraph (1) or (2), the agency shall make publicly

1 available a written copy of such vote reflecting the vote of
2 each member on the question. If a portion of a meeting is
3 *to be* closed to the public, the agency shall, within one day
4 of the vote taken pursuant to paragraph (1) or (2) of this
5 subsection, make publicly available a full written explana-
6 tion of its action closing the portion together with a list of
7 all persons expected to attend the meeting and their
8 affiliation.

9 “(4) Any agency, a majority of the portions of whose
10 meetings may properly be closed to the public pursuant to
11 paragraph (4), (8), (9) (A), or (10) of subsection (c),
12 or any combination thereof, may provide by regulation for
13 the closing of such portions in the event that a majority of
14 the members of the agency votes by recorded vote at the
15 beginning of such meeting, or portion thereof, to close the
16 exempt portion or portions of the meeting, and a copy of
17 such vote, reflecting the vote of each member on the ques-
18 tion, is made available to the public. The provisions of para-
19 graphs (1), (2), and (3) of this subsection and subsection
20 (e) shall not apply to any portion of a meeting to which
21 such regulations apply: *Provided*, That the agency shall,
22 except to the extent that such information is exempt from
23 disclosure under the provisions of subsection (c), provide
24 the public with public announcement of the date, place, and
25 subject matter of the meeting and each portion thereof at

1 the earliest practicable time and in no case later than the
2 commencement of the meeting or portion in question.

3 “(e) In the case of each meeting, the agency shall make
4 public announcement, at least one week before the meeting,
5 of the date, place, and subject matter of the meeting, whether
6 it is to be open or closed to the public, and the name and
7 phone number of the official designated by the agency to
8 respond to requests for information about the meeting. Such
9 announcement shall be made unless a majority of the mem-
10 bers of the agency determines by a recorded vote that agency
11 business requires that such meeting be called at an earlier
12 date, in which case the agency shall make public announce-
13 ment of the date, place, and subject matter of such meeting,
14 and whether open or closed to the public, at the earliest
15 practicable time and in no case later than the commence-
16 ment of the meeting or portion in question. The time, place,
17 or subject matter of a meeting, or the determination of the
18 agency to open or close a meeting, or portion of a meeting,
19 to the public, may be changed following the public announce-
20 ment required by this paragraph only if (1) a majority of
21 the entire membership of the agency determines by a re-
22 corded vote that agency business so requires and that no
23 earlier announcement of the change was possible, and (2)
24 the agency publicly announces such change and the vote
25 of each member upon such change at the earliest practicable

1 time and in no case later than the commencement of the
2 meeting or portion in question.

3 “(f) (1) A complete transcript or electronic recording
4 adequate to record fully the proceedings shall be made of each
5 meeting, or portion of a meeting, closed to the public, ex-
6 cept for a meeting, or portion of a meeting, closed to the
7 public pursuant to paragraph (10) of subsection (c). The
8 agency shall make promptly available to the public, in a
9 location easily accessible to the public, the complete transcript
10 or electronic recording of the discussion at such meeting of
11 any item on the agenda, or of the testimony of any witness
12 received at such meeting, except for such portion or portions
13 of such discussion or testimony as the agency, by recorded
14 vote taken subsequent to the meeting and promptly made
15 available to the public, determines to contain information
16 specified in paragraphs (1) through (10) of subsection (c).
17 In place of each portion deleted from such a transcript or
18 transcription the agency shall supply a written explanation
19 of the reason for the deletion, and the portion of subsection
20 (c) and any other statute said to permit the deletion. Copies
21 of such transcript, or a transcription of such electronic re-
22 cording disclosing the identity of each speaker, shall be fur-
23 nished to any person at no greater than the actual cost of
24 duplication or transcription or, if in the public interest, at
25 no cost. The agency shall maintain a complete verbatim

1 copy of the transcript, or a complete electronic recording of
2 each meeting, or portion of a meeting, closed to the public,
3 for a period of at least two years after such meeting,
4 or until one year after the conclusion of any agency pro-
5 ceeding with respect to which the meeting, or a portion
6 thereof, was held, whichever occurs later.

7 “(2) Written minutes shall be made of any agency meet-
8 ing, or portion thereof, which is open to the public. The
9 agency shall make such minutes promptly available to the
10 public in a location easily accessible to the public, and shall
11 maintain such minutes for a period of at least two years after
12 such meeting. Copies of such minutes shall be furnished to
13 any person at no greater than the actual cost of duplication
14 thereof or, if in the public interest, at no cost.

15 “(g) Each agency subject to the requirements of this
16 section shall, within 180 days after the date of enactment
17 of this section, following consultation with the Office of the
18 Chairman of the Administrative Conference of the United
19 States and published notice in the Federal Register of at
20 least thirty days and opportunity for written comment by
21 any persons, promulgate regulations to implement the re-
22 quirements of subsections (b) through (f) of this section.
23 Any person may bring a proceeding in the United States
24 District Court for the District of Columbia to require an
25 agency to promulgate such regulations if such agency has.

1 not promulgated such regulations within the time period
2 specified herein. Subject to any limitations of time therefor
3 provided by law, any person may bring a proceeding in
4 the United States Court of Appeals for the District of Colum-
5 bia to set aside agency regulations issued pursuant to this
6 subsection that are not in accord with the requirements of
7 subsections (b) through (f) of this section, and to require
8 the promulgation of regulations that are in accord with such
9 subsections.

10 “(h) The district courts of the United States have juris-
11 diction to enforce the requirements of subsections (b)
12 through (f) of this section. Such actions may be brought by
13 any person against an agency or its members prior to, or
14 within sixty days after, the meeting out of which the viola-
15 tion of this section arises, except that if public announce-
16 ment of such meeting is not initially provided by the
17 agency in accordance with the requirements of this section,
18 such action may be instituted pursuant to this section at any
19 time prior to sixty days after any public announcement of
20 such meeting. Such actions may be brought in the district
21 wherein the plaintiff resides, or has his principal place of
22 business, or where the agency in question has its headquar-
23 ters. In such actions a defendant shall serve his answer
24 within twenty days after the service of the complaint, but
25 such time may be extended by the court for up to twenty

1 additional days upon a showing of good cause therefor. The
2 burden is on the defendant to sustain his action. In deciding
3 such cases the court may examine in camera any portion of
4 a transcript or electronic recording of a meeting closed to the
5 public, and may take such additional evidence as it deems
6 necessary. The court, having due regard for orderly adminis-
7 tration and the public interest, as well as the interests of the
8 party, may grant such equitable relief as it deems appro-
9 priate, including granting an injunction against future viola-
10 tions of this section, or ordering the agency to make available
11 to the public such portion of the transcript or electronic
12 recording of a meeting as is not authorized to be withheld
13 under subsection (c) of this section. Except to the extent
14 provided in subsection (i) of this section, nothing in this sec-
15 tion confers jurisdiction on any district court acting solely
16 under this subsection to set aside, enjoin or invalidate any
17 agency action taken or discussed at an agency meeting out
18 of which the violation of this section arose.

19 “(i) Any Federal court otherwise authorized by law to
20 review agency action may, at the application of any person
21 properly participating in the judicial review proceeding, in-
22 quire into violations by the agency of the requirements of this
23 section and afford any such relief as it deems appropriate.

24 “(j) The court may assess against any party reasonable
25 attorney fees and other litigation costs reasonably incurred by

1 any other party who substantially prevails in any action
2 brought in accordance with the provisions of subsection (g);
3 (h), or (i) of this section, except that costs may be assessed
4 against an individual member of an agency only in the case
5 where the court finds such agency member has intentionally
6 and repeatedly violated this section and against the plaintiff
7 only where the court finds that the suit was initiated by the
8 plaintiff primarily for frivolous or dilatory purposes. In the
9 case of assessment of costs against an agency, the costs may
10 be assessed by the court against the United States.

11 “(k) Each agency subject to the requirements of this
12 section shall annually report to Congress regarding its com-
13 pliance with such requirements, including a tabulation of the
14 total number of agency meetings open to the public, the
15 total number of meetings closed to the public, the reasons
16 for closing such meetings, and a description of any litigation
17 brought against the agency under this section, including any
18 costs assessed against the agency in such litigation (whether
19 or not paid by the agency).

20 “(l) Except as specifically provided in this section,
21 nothing herein expands or limits the present rights of any
22 person under section 552 of this title, except that the pro-
23 visions of this Act shall govern in the case of any request
24 made pursuant to such section to copy or inspect the tran-
25 scripts or electronic recordings described in subsection (f)

1 of this section. The requirements of chapter 33 of title 44,
2 United States Code, shall not apply to the transcripts and
3 electronic recordings described in subsection (f) of this
4 section.

5 “(m) This section does not constitute authority to with-
6 hold any information from Congress, and does not authorize
7 the closing of any agency meeting or portion thereof other-
8 wise required by law to be open.

9 “(n) Nothing in this section authorizes any agency
10 to withhold from any individual any record, including tran-
11 scripts or electronic recordings required by this Act, which
12 is otherwise accessible to such individual under section 552a
13 of this title.

14 “(o) In the event that any meeting is subject to the pro-
15 visions of the Federal Advisory Committee Act as well as
16 the provisions of this section, the provisions of this section
17 shall govern.”.

18 (b) The chapter analysis of chapter 5 of title 5,
19 United States Code, is amended by inserting:

“552b. Open meetings.”

20 immediately below:

“552a. Records about individuals.”.

21 EX PARTE COMMUNICATIONS

22 SEC. 4. (a) Section 557 of title 5, United States Code,

1 is amended by adding at the end thereof the following new
2 subsection:

3 “(d) (1) In any agency proceeding which is subject to
4 subsection (a) of this section, except to the extent required
5 for the disposition of ex parte matters as authorized by law—

6 “(A) no interested person outside the agency shall
7 make or cause to be made to any member of the body
8 comprising the agency, administrative law judge, or
9 other employee who is or may reasonably be expected
10 to be involved in the decisional process of the proceed-
11 ing, an ex parte communication relative to the merits
12 of the proceeding;

13 “(B) no member of the body comprising the agen-
14 cy, administrative law judge, or other employee who
15 is or may reasonably be expected to be involved in
16 the decisional process of the proceeding, shall make or
17 cause to be made to any interested person outside the
18 agency an ex parte communication relative to the merits
19 of the proceeding;

20 “(C) a member of the body comprising the agency,
21 administrative law judge, or other employee who is or
22 may reasonably be expected to be involved in the de-
23 cisional process of such proceeding who receives, or
24 who makes or causes to be made, a communication pro-

1 hibited by this subsection shall place on the public record
2 of the proceeding:

3 “(i) all such written communications;

4 “(ii) memoranda stating the substance of all
5 such oral communications; and

6 “(iii) all written responses, and memoranda
7 stating the substance of all oral responses, to the
8 materials described in clauses (i) and (ii) of this
9 subparagraph;

10 “(D) in the event of a communication prohibited
11 by this subsection and made or caused to be made by a
12 party or *interested person*, the agency, administrative
13 law judge, or other employee presiding at the hearing
14 may, to the extent consistent with the interests of justice
15 and the policy of the underlying statutes, require the
16 person or party to show cause why his claim or interest
17 in the proceeding should not be dismissed, denied, dis-
18 regarded, or otherwise adversely affected on account of
19 such violation; and

20 “(E) the prohibitions of this subsection shall apply
21 beginning at such time as the agency may designate,
22 but in no case shall they begin to apply later than the
23 time at which a proceeding is noticed for hearing unless
24 the person responsible for the communication has knowl-
25 edge that it will be noticed, in which case the prohibi-

1 tions shall apply beginning at the time of his acquisition
2 of such knowledge.

3 “(2) This section does not constitute authority to with-
4 hold information from Congress.”.

5 (b) Section 551 of title 5, United States Code, is
6 amended—

7 (1) by striking out “and” at the end of paragraph
8 (12) ;

9 (2) by striking out the “act.” at the end of para-
10 graph (13) and inserting in lieu thereof “act; and”;
11 and

12 (3) by adding at the end thereof the following new
13 paragraph:

14 “(14) ‘ex parte communication’ means an oral or
15 written communication not on the public record with
16 respect to which reasonable prior notice to all parties
17 is not given.”.

18 (c) Section 556 (d) of title 5, United States Code, is
19 amended by inserting between the third and fourth sentences
20 thereof the following new sentence: “The agency may, to
21 the extent consistent with the interests of justice and the
22 policy of the underlying statutes administered by the agency,
23 consider a violation of section 557 (d) of this title sufficient
24 grounds for a decision adverse to a person or party who has
25 committed such violation or caused such violation to occur.”.

1 CONFORMING AMENDMENTS

2 SEC. 5. (a) Section 410 (b) (1) of title 39, United
3 States Code, is amended by inserting after "Section 552
4 (public information)," the words "section 552a (records
5 about individuals), section 552b (open meetings),".

6 (b) Section 552 (b) (3) of title 5, United States Code,
7 is amended to read as follows:

8 "(3) required to be withheld from the public by
9 any statute establishing particular criteria or referring
10 to particular types of information;".

11 EFFECTIVE DATE

12 SEC. 6. (a) Except as provided in subsection (b) of
13 this section, the provisions of this Act shall take effect one
14 hundred and eighty days after the date of its enactment.

15 (b) Subsection (g) of section 552b of title 5, United
16 States Code, as added by section 3 (a) of this Act, shall take
17 effect upon enactment.

[Report No. 94-880]

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

By Ms. ABZUG, Mr. FASCELL, Mr. BROOKS, Mr. MOSS, Mr. MACDONALD of Massachusetts, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. WRIGHT, Mr. FUQUA, Mr. CONYERS, Mr. JAMES V. STANTON, Ms. COLLINS of Illinois, Mr. JOHN L. BURTON, Mr. HARRINGTON, Mr. DRINAN, Mr. MEZVINSKY, Ms. JORDAN, Mr. EVANS of Indiana, Mr. MOFFETT, Mr. MAGUIRE, Mr. ASPIN, Mr. GUDE, Mr. McCLOSKEY, Mr. STEELMAN, and Mr. PRITCHARD

FEBRUARY 3, 1976

Referred to the Committee on Government Operations

MARCH 8, 1976

Reported with amendments, referred to the Committee on the Judiciary for a period ending not later than April 8, 1976, for consideration of such provisions of the bill as fall within the jurisdiction of that committee under rule X, clause (1)(m), and ordered to be printed